



## HB 568, RELATING TO SEX TRAFFICKING

FEBRUARY 23, 2021 · SENATE JUDICIARY  
COMMITTEE · CHAIR REP. MARK M. NAKASHIMA

**POSITION:** Strong support.

**RATIONALE:** Imua Alliance **strongly supports HB 568**, relating to sex trafficking, which authorizes a prosecution for sex trafficking to be commenced at any time; includes coercion as a means of committing the offense of sex trafficking; makes the solicitation of a minor for sex a strict liability offense of sex trafficking; and repeals the offense of solicitation of a minor for prostitution.

Imua Alliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention (victim rescue) services to 150 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims and individuals at risk of sexual exploitation. **During the pandemic, demand for victim services to our organization has skyrocketed by 330 percent, driven in part by a fivefold increase in direct crisis calls from potential trafficking victims.**

Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, many of the victims

with whom we work are misidentified as so-called “voluntary prostitutes” and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.

Sex trafficking is a profoundly violent crime. At least 23 percent of trafficking victims in Hawai‘i report being first exploited before turning 18, according to a recent report, with the average age of trafficked keiki’s initial exposure to exploitation being 11. Based on regular outreach and monitoring, we estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai‘i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O‘ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU’s findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. Imua Alliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told Imua Alliance prior to being rescued, “I can’t be raped. Only good girls can be raped. I’m a bad girl. If I *want* to be raped, I have to *earn* it.”

Accordingly, we support measures to advance our state’s ability to stop sexual slavery, including this measure’s effort to increase sanctions for sex buyers who prey upon our keiki. **Hawai‘i’s prohibition of solicitation of a minor for prostitution under HRS §712-1209.1 does not align with 22 U.S. Code Chapter 78, the Trafficking Victims Protection Act, which makes soliciting a minor for prostitution a form of sex trafficking.** Designating soliciting a minor for prostitution a form of sex trafficking, as this bill does, will ensure that sex buyers who finance the commercial sexual exploitation of children are held fully accountable for the trauma they cause.

This, alone, would be a tremendous step forward in our state's anti-trafficking code. Currently, HRS §712-1209.1 fails to properly identify child victims of sexual exploitation as victims of sex trafficking, impairing their ability to receive trauma-informed services that are reserved for survivors of sex trafficking. It also fails to hold sex buyers fully responsible for this trauma under the stricter penalties encapsulated in our state's sex trafficking section under HRS §712-1202, which makes sex trafficking a class A felony.

Furthermore, **the crime of "solicitation of a minor for prostitution" legally attaches the term "prostitute" to child victims of HRS §712-1209.1**, which contradicts the modern legal and victim services perspective of eliminating statutory references that directly or inadvertently label children as prostitutes, a designation that can produce a long-lasting social stigma that impedes a victim's ability to receive housing, education, scholarships, employment, and other services necessary to successfully recover from the prolonged trauma of sexual exploitation. **There is no such thing as a child prostitute. Instead, children found in the commercial sex trade should be automatically designated as sex trafficking victims.**

**Federal law has long recognized soliciting a child for prostitution as a form of sex trafficking under the Trafficking Victims Protection Act**, which defines child sex trafficking as the "recruitment, harboring, transportation, provision, obtaining, patronizing, or *soliciting* of a minor for the purpose of a commercial sex act." Thus, we strenuously encourage the committee to move the important elements of HRS §712-1209.1 into HRS §712-1202, including language allowing law enforcement to perform undercover sting operations, ensuring that the state of mind requirement for trafficking a minor does not apply to the minor's age (making sex trafficking of minors a strict liability offense), and eliminating consent to sexual conduct as a defense to sex trafficking (a defense we sadly see used with increasing frequency throughout the United States).

Additionally, we fully support adding coercion as a means of committing the offense of sex trafficking and authorizing a prosecution for sex trafficking to be commenced at any time. As indicated above, sex trafficking victims are typically trauma bonded to their abusers. **Trauma-attached coercion is like Stockholm Syndrome, involving a powerful emotional dependency on the abusers and a shift in world- and self-view that results in feelings of gratitude and loyalty toward the abusers and a denial, dismissal, or minimization of the**

**coercion, violence, and exploitation that victims have suffered.** Trauma-attached victims require placement in a coordinated continuum of care to “break” their trauma bonds, receive rehabilitative services, and reintegrate into society in a healthy manner. It is common for victims to need long-term care before recognizing the extent of the trauma they’ve suffered, much less feel emotionally and physically secure enough to participate in criminal investigations. Moreover, sex trafficking often involves elements of nonphysical intimidation, such as social manipulation, ridicule, sexual humiliation, emotional and financial injury, and the establishment of a continuous climate of fear. Thus, to fully respect the needs of survivors and ensure that all victims of sexual exploitation may receive justice, **we believe that the statute of limitations on sex trafficking cases should be eliminated.**

Finally, we note and wholly support the **new language contained on page 5, lines 20-21, through page 6, lines 1 through 8,** which will ensure that our state’s prohibition on buying sex from minors applies to **sex buyers who pay not just the minors themselves, but also the pimps, traffickers, “mamasans,” and other facilitators of sexual exploitation** who subject our keiki to sexual servitude.

Slavery has no place in paradise. Together, we can end exploitation on our shores.

**Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · [kris@imuaalliance.org](mailto:kris@imuaalliance.org)**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY- FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 568, RELATING TO SEX TRAFFICKING.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 23, 2021      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325, Via Videoconference

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Farshad M. Talebi, Deputy Attorney General

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Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill would (1) remove the statute of limitations for the crimes of sex trafficking and promoting prostitution, (2) move the offense of solicitation of a minor for prostitution under the offense of sex trafficking, (3) change the requirement for knowledge of a child sex trafficking victim's age to strict liability, (4) add coercion as a means of committing the offense of sex trafficking, and (5) eliminate consent as a defense for sex trafficking.

The Department supports amending section 701-108, Hawaii Revised Statutes (HRS), to add sex trafficking to the list of offenses for which a prosecution may be commenced at any time as proposed in section 2 of this bill, at page 3, lines 6 through 12. Eliminating the statute of limitations for sex trafficking is important because it will improve the State's ability to prosecute sex offenders whose victims are unable to seek help from law enforcement while they are under the control of their offender. Extending the time in which victims are able to report the offenses will enable victims to report offenses after they have escaped to a safe environment and will improve the State's ability to hold sex traffickers accountable for their offenses.

The amendments to section 712-1202, HRS, at page 6, lines 9 through 13, make sex trafficking involving minors a strict liability offense. This is important because those

who commercially sexually exploit minors should be held accountable regardless of what they believe the victim's age to be.

Although it is not addressed in this bill, the Department has other significant legal concerns with the sex trafficking statute and the solicitation of a minor for prostitution statute, and respectfully asks the committee to consider the amendments outlined in House Bill No. 887. House Bill No. 887 includes some of the amendments proposed in this bill, however, it is a more comprehensive revision to the sex trafficking and prostitution-related statutes.

We appreciate this opportunity to provide comments on this bill.

# TESTIMONY

Harm Reduction Hawaii  
c/o 1658 Liholiho St #205  
Honolulu, HI 96822

RE: HB568 to be heard on Tuesday, February 23, at 2:00PM in conference room 325

## **Oppose**

To the House Committee on Judiciary & Hawaiian Affairs

Aside from the discussion of changing the statute of limitation there is nothing in this bill that will help young people engaged in the sex industry whether controlled by a trafficker, or as most of them are, on their own. This jail all the sex buyers approach is supported by a certain portion of the women's community for philosophical reasons. The effects on sex sellers are universally negative.

The idea that every human problem can be solved by longer prison sentences has been shown wanting in drug policy. There are other bills that deal with the stature of limitations issue as a stand-alone matter. I strongly suggest this bill be gutted and replaced with the language of SB753 that does that.

The more detailed issues concerning these young people should be discussed with the many local experts who are not involved with the people promoting this bad bill. I have had discussions with committee member Ichiyama about including the harm reduction community in the planning process on such matters. I hope the full committee will realize the value in this. It is better to do nothing than to do something that makes the problems worse.

Very Truly Yours;



Tracy Ryan  
Executive Director, Harm Reduction Hawaii



**TO:** The Honorable Mark M. Nakashima, Chair, The Honorable Scot Z. Matayoshi, Vice Chair, and Honorable Members of the Committee on Human Services

**FROM:** Marci Hamilton, CEO & Legal Director, CHILD USA; Robert A. Fox Professor of Practice, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USAAdvocacy

**RE:** HB 568, elimination of criminal SOL for child sex trafficking

**DATE:** February 22, 2021

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Dear Chairwoman, Vice Chairman, and Members of the Committee on Human Services,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding HB 568, which will increase access to justice for victims of childhood sex trafficking and enhance protection for children in Hawaii. If passed, this legislation will make Hawaii a leader in the fight to protect children's rights.

By way of introduction, Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor in the Fels Institute of Government. She authored *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations, or "SOL" reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up HB 568 (and its companion in the Senate, SB 831). HB 568 would eliminate the criminal SOL for child sex trafficking crimes, as well as clarify the definition of sex trafficking to include non-monetary compensation. HB 568 would remove references to childhood "prostitution" and use more correct language like "commercial sexual exploitation." If passed, this legislation will bring Hawaii closer to being a leader in the fight to protect children's rights.





## I. HB 568 Will Correctly Identify Children as Victims

According to federal law, **any child engaged in commercial sex is a victim of a severe form of sex trafficking.**<sup>1</sup> The federal law correctly acknowledges that children are incapable of consenting to sex. Moreover, anyone over the age of 18 engaged in commercial sex who has experienced any form of physical or sexual force, coercive grooming, financial coercion, or manipulative fraud at any time is also considered a victim.

HB 568 removes the language of “prostitution” from its laws, and correctly identifies children as victims, bringing its interpretation into line with federal law. It also underscores this change by removing consent as a possible defense for child sex trafficking and clarifies the definition of trafficking to include both coercion and solicitation. These changes encourage an attitude shift in victims, law enforcement, members of the judiciary, and the public to recognize victims as victims, and to remove misplaced stigma that may keep victims from coming forward.

## II. The Science of Delayed Disclosure Supports SOL Reform for Child Sex Trafficking

There is a worldwide epidemic of child sex trafficking, with millions of people being trafficked for sex, 94% of which are women and girls.<sup>2</sup> In 2019, Polaris Project worked on trafficking situations involving 22,326 individual survivors in the United States through the National Trafficking Hotline.<sup>3</sup> According to the National Center for Missing and Exploited Children, **1 out of 6 children reported missing is “likely [a victim] of child sex trafficking”** based on case information.<sup>4</sup> In a recent joint study by Arizona State University and the Hawai’i State Commission on the Status of Women conducted from April-June 2019, **1 out of 5 victims of sex trafficking in Hawaii were trafficked as children.**<sup>5</sup>

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.<sup>6</sup> It is now settled that PTSD, memory deficits, and complete

<sup>1</sup> 22 U.S.C. § 7102(11)(a).

<sup>2</sup> *Global Report on Trafficking in Persons*, UNODC, 33 (2018), available at [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf).

<sup>3</sup> *Myths, Facts, and Statistics*, POLARIS PROJECT (last visited February 11, 2021), available at <https://polarisproject.org/myths-facts-and-statistics/>.

<sup>4</sup> K. Tate Chambers, Ed., *Human Trafficking*, 65 U.S. ATTORNEY’S BULLETIN, 33 (Nov. 2017), available at <https://www.justice.gov/usao/page/file/1008856/download>.

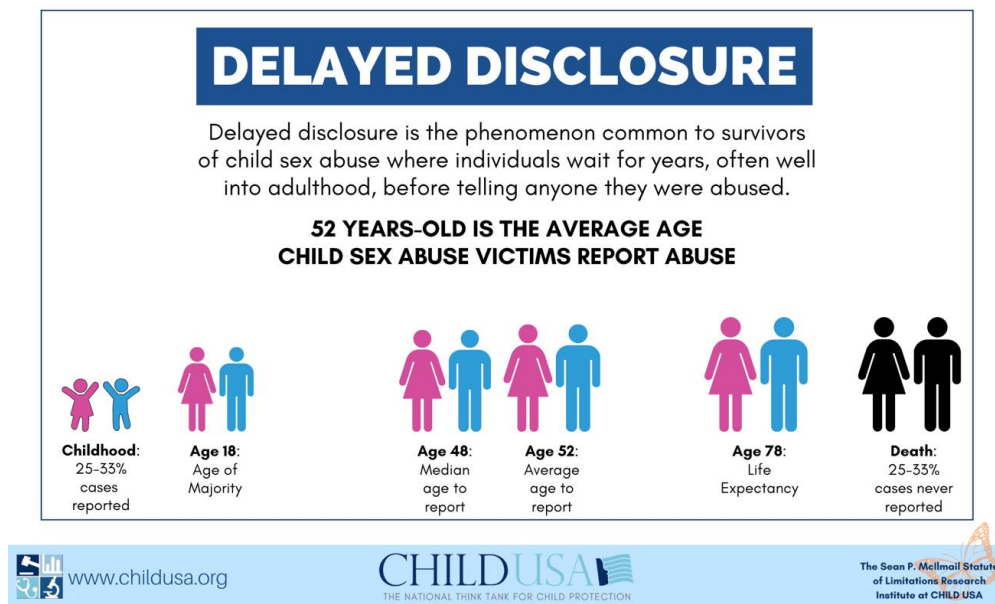
<sup>5</sup> See Dominique Roe-Sepowitz & Khara Jabola-Carolus, *Sex Trafficking in Hawai’i: Part III*, ASU (Jan. 2020), available at <https://humanservices.hawaii.gov/wp-content/uploads/2020/02/ST-in-Hawai%E2%80%98i-Executive-Summary-January-2020-FINAL-2.pdf>.

<sup>6</sup> VAN DER KOLK, B. THE BODY KEEPS THE SCORE: MEMORY & THE EVOLVING PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS, HARVARD REV. OF PSYCHIATRY (1994) 1(5), 253-65; Jim Hopper, *Why Can’t Christine Blasey Ford Remember How She Got Home?*, SCIENTIFIC AMER. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA 30 (2019), available at [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf) (hereinafter “Hoskell”).

disassociation are common coping mechanisms for child victims.<sup>7</sup> As a result, it can take years for a victim to acknowledge their abuse.

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”<sup>8</sup> Studies suggest that many victims, as much as 33%, never disclose their abuse.<sup>9</sup> The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.<sup>10</sup>

In fact, the **average age of disclosure of child sexual abuse, including child sex trafficking, in a study of 1,000 victims was 52 years-old.**<sup>11</sup> Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.



<sup>7</sup> Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, FRONTIERS IN PSYCHOL. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

<sup>8</sup> CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

<sup>9</sup> *Id.*

<sup>10</sup> Hoskell, at 24.

<sup>11</sup> CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

It is a medical fact that victims of child sex trafficking often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex trafficking play into the hands of the perpetrators and the institutions enable them; they disable victims' voices and empowerment. Because of its lifelong effect on health and well-being that can erect high barriers to disclosure and the fact that many perpetrators pursue and assault children even in their elder years, childhood sexual abuse needs to be added to the list of laws that should not be subject to an SOL, like kidnapping, fraud and embezzlement, war crimes, treason, and murder in the United States. HB 568 seeks to do just that.

### III. **HB 568 Will Serve the Public Good by Increasing Victims' Access to Justice and Preventing Future Abuse**

Statutes of limitations or SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from naming their perpetrators publicly for fear of retaliation and from obtaining justice.

Current Hawaii law provides that a prosecution for child sex trafficking must be commenced within 6 years of the abuse, or by a victim's 24<sup>th</sup> birthday.<sup>12</sup> HB 568 would eliminate the criminal SOL, allowing more victims to come forward when they are ready.

## HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE

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**Identifies previously unknown predators and institutions responsible**  
to the public, shielding other children from future abuse.
- 

**Shifts the cost of abuse**  
from the victims and society to the perpetrators and the institutions that enabled them.
- 

**Educates the public**  
about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.


[www.childusa.org](http://www.childusa.org)

**CHILDUSA**  
THE NATIONAL THINK TANK FOR CHILD PROTECTION

The Sean P. McInnis Statute  
of Limitations Research  
Institute at CHILD USA

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states have shut down most

<sup>12</sup> HAW. REV. STAT. ANN. § 701-108.

cases. That is a major reason we knew so little about the epidemic of child sex abuse and child sex trafficking. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. By allowing prosecutors and victims all the time they need to prosecute a child sex trafficking case, hidden predators are brought into the light and are prevented from further abusing more children. Preventing further abuse only serves to help –society—by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children to grow into healthy adults. SOL reform also educates the public about the danger of child sexual abuse.

#### **IV. Hawaii Should Join the National Trend Toward Meaningful SOL Reform for Child Sex Abuse by Eliminating its Criminal SOL for Child Sex Trafficking**

There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement from 2002 through 2020, see CHILD USA's 2020 SOL Report.<sup>13</sup> 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in 2019.<sup>14</sup> The powerful SOL reform wave rode its way into 2020, with 30 states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.<sup>15</sup> By February of 2021, 27 states have already introduced SOL reform bills.<sup>16</sup>

This proposed elimination of the criminal SOL among the other changes suggested in HB 568 is in line with the recent trend to eliminate the criminal SOL and to give victims into their 50's time to come forward in accordance with the delayed disclosure of abuse science. Hawaii has already eliminated the criminal SOL for first and second-degree sexual assault and continuous sexual assault of a minor under age 14, so HB 568 corrects the omission of child sex trafficking from that list. It also better aligns Hawaii's definitions of child sex trafficking to those of the federal government, to highlight the reality that children involved in sex trafficking are victims.

Once again, we commend you for supporting this legislation, which is desperately needed to help survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Hawaii's children deserve SOL reform to protect them today and into the future. Extending the time for survivors to file suit and opening a window for expired claims is a positive step for Hawaii's children and families. Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

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<sup>13</sup> 2020 SOL Report, CHILDUSA.ORG (last visited Feb. 10, 2021), available at [www.childusa.org/sol-report-2020](http://www.childusa.org/sol-report-2020).

<sup>14</sup> For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at [www.childusa.org/2019sol](http://www.childusa.org/2019sol).

<sup>15</sup> See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).

<sup>16</sup> See *id.*

Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right.

Marci A. Hamilton, Esq.  
*Founder, CEO & Legal Director*  
CHILD USA  
3508 Market Street, Suite 202  
Philadelphia, PA 19104  
(215) 539-1906

A handwritten signature in black ink that reads "Kathryn Robb". The signature is cursive and somewhat stylized.

Kathryn Robb, Esq.  
Executive Director  
CHILD USA Advocacy  
3508 Market St., Suite 201  
Philadelphia, PA 19104

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Judiciary and Hawaiian Affairs**

February 23, 2021

H.B. No. 568: RELATING TO SEX TRAFFICKING

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 568.

H.B. No. 568 seeks to repeal HRS §712-1209.1 and inserts the prohibited conduct of 712-1209.1 into the Sex Trafficking Statute HRS §712-1202. This amendment to HRS §712-1202 presents several concerns.

H.B. No. 568 purports to target the approximately “one hundred fifty establishments” that “participate in the commercial sex trade in the State.” Yet, there is very little in the proposed amendment that truly addresses “establishments.” On the contrary, HRS §712-1209.1 targets the customers, more commonly known as “johns,” who solicit a minor, or a law enforcement officer who represents himself/herself to be a minor.

Singling out prostitution “johns” for harsh treatment is misguided and should be directed at the pimps, sex traffickers, and the organizations that work on a larger scale and directly benefit from actual sex trafficking.

A conviction for the offense of solicitation of a minor currently carries a maximum penalty of five years imprisonment. The proposal in this measure to classify the offense as a Class A felony and increase the maximum penalty to twenty years of incarceration is unduly harsh. Pimps, sex traffickers, and sex trade establishments should be the primary focus of the sex trafficking laws and they deserve the harsh punishment of twenty years. Indeed, the focus should not be on cutting off the demand for prostitution but on its supply. Pimps, traffickers, and sex establishment owners who force minors into prostitution should receive harsh punishment. Their actions are heinous, and intentional. “Johns”, on the other hand, should not be subject to the same punishment as those who groom, exploit and force minors into prostitution.

Should a young adult, an 18-year-old, who would not even think twice to distinguish someone who is 17 years old or 18 years old, be subject to a non-probationable twenty-year sentence? “Johns” who do not have an actual preference for minors may be deceived, entrapped or enticed to commit this offense.

“Johns” already face harsh penalties for soliciting a minor. Because of the aggravating circumstance of soliciting a minor to engage in sexual conduct, HRS 712-1209.1 was appropriately classified as a Class C felony. This measure will unfairly punish the individual “john” who solicits a minor for sexual conduct and does little to target the establishments that perpetuate and prey on minors that are victims to sex trafficking. And finally, the convicted customers face the shame of the offense. It makes no sense that the “johns” convicted of soliciting a minor for prostitution would be treated more harshly than or the same as the pimps, sex traffickers, and sex establishment owners.

We also oppose passage of section 4 of the bill which, under the sex trafficking law, establishes a strict liability Class A felony for someone who offers to pay a fee for sexual conduct to a minor or to a law enforcement officer posing as a minor. The measure will eliminate the defense that the minor represented himself or herself as an adult. It is not uncommon for minors, including those involved in the sex industry, to hold themselves out at an age older than they are. It would be draconian and unjust to punish someone with a 20-year prison term who possessed the state of mind to commit simple prostitution with someone who he/she legitimately believed to be an adult. Indeed, adults with no intention or desire to engage in sexual conduct with a minor will be subject to a 20-year prison term. Even a defendant who requests to see identification from the minor and is provided with false identification indicating he/she is 18-years-old or older would be unjustly subjected to a class A felony.

Additionally, we oppose passage of Section 1 which removes the statute of limitations for sex trafficking. Statutes of limitations have been established to allow for timely prosecution of criminal offenses. With the passage of time, a criminal charge becomes more difficult to defend against and wrongful convictions are more likely to occur. The memories of witnesses become more inaccurate, witnesses are more likely to become influenced by persons who have interests in the case, and relevant evidence is more difficult to obtain. Thus, under the law, criminal charges must be brought within certain time periods following their commission.

Sex trafficking (HRS § 712-1202) is a Class A felony for which there is currently a six-year statute of limitations. This time period is sufficient for timely and just prosecutions in these types of cases.

If the committee is inclined to extend the statute of limitations, this extension should not be applied retroactively to cases in which the applicable statute of limitations has already expired. Put another way, a statute of limitations that has already expired cannot be revived. In fact, the federal courts have prohibited such *ex post facto* applications, holding in *Stogner v. California*, 539 U.S. 607, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003) that “a law enacted after expiration of a previously applicable time limitations period violates the *Ex Post Facto* Clause when it is applied to revive a previously time-barred prosecution.”

Additionally, should the committee extend the statute of limitations, we encourage the committee to extend the current statute of limitations to a finite time period, and not allow prosecutions to commence “at any time”.

With HRS §712-1209.1 being subsumed into HRS §712-1202, “johns,” who would have otherwise been charged with HRS §712-1209, lose the opportunity to ask the sentencing court for a deferral pursuant to HRS §853-4. Why is it important that some defendants receive deferrals of their criminal proceedings? A criminal conviction follows an individual for the rest of his/her life. It will impact his/her ability to seek and maintain employment and to receive government benefits. A defendant who is youthful, immature, remorseful and is not likely to re-offend should be allowed, in limited circumstances, to be given the opportunity for a second chance -- a chance to avoid a criminal conviction. Police officers, soldiers, government and private sector employees may lose their jobs if they receive a criminal conviction.

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai‘i is to increase penalties. Increased penalties (from a maximum of five years prison to a maximum of twenty years prison) will only continue to exacerbate the Hawai‘i prison overcrowding problem. Our jails and prisons are filled above not only design capacity but also operational capacity. A significant portion of the State’s prison population is incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks. According to a recent study by the Prison Policy Initiative, in 2018, Hawai‘i had an incarceration rate of 487 per



100,000 people.<sup>1</sup> Although Hawai‘i ranked 37th among the 50 states, if every state was an independent nation, Hawai‘i would have the 43rd highest incarceration rate in the world.<sup>2</sup> Only three foreign countries have a higher incarceration rate than Hawai‘i.<sup>3</sup> Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies do.<sup>4</sup>

While it is logical and understandable that the State continues to have an interest in prohibiting said conduct, it is patently unfair and unjust to attach a non-probationable 20 year mandatory prison term to an offense that was previously a Class C felony where sentencing allowed for probation and fixed the maximum penalty at 5 years of incarceration. A bill that purports to target commercial sex trade establishments should do just that – and not punish the less culpable “john” with an unduly harsh and severe penalty.

Thank you for the opportunity to provide testimony in this matter.

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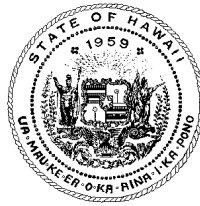
<sup>1</sup> Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

<sup>2</sup> Prison Policy Initiative, “States of Incarceration: The Global Context.” See <https://www.prisonpolicy.org/global/2018.html>

<sup>3</sup> Id.

<sup>4</sup> Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 568  
RELATING TO SEX TRAFFICKING.

By  
Max N. Otani, Director

House Committee on Judiciary and Hawaiian Affairs  
Representative Mark M. Nakashima, Chair  
Scot Z. Matayoshi, Vice Chair

Thursday, February 23, 2021; 2:00 p.m.  
Via Video Conference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 568, which authorizes a prosecution for sex trafficking to be commenced at any time. It further makes the habitual solicitation of a minor for sex a strict liability offense of sex trafficking.

PSD is supportive of any measure that reduces sex trafficking within the State of Hawaii. This measure will help to protect Hawaii's children from sexual predators.

Thank you for the opportunity to provide this testimony.

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**SENATE COMMITTEE ON HUMAN SERVICES**  
**Thirty-first State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

February 23, 2021

**RE: H.B. 568, RELATING TO SEX TRAFFICKING.**

Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in support of H.B. 568, with amendments.

The purpose of H.B. 568 is to provide greater protection for victims of sex trafficking, by strengthening and clarifying Hawaii’s sex trafficking laws. Specifically, Section 2 removes the statute of limitations for criminal prosecution of sex trafficking. Section 4 amends Section §712-1202, Hawaii Revised Statutes (“HRS”) (sex trafficking) to include coercion; adds (as a new subsection) the offense previously known as “solicitation of a minor for prostitution” (Section 10 deletes the existing offense from HRS §712-1209.1), but in terms of “consideration” instead of a “fee”; and makes knowledge of the minor’s age a strict liability standard. Section 5 adds the new subsection to habitual solicitation of prostitution, and raises it to a class A felony where the instant offense involves a minor. Sections 3 and 6-9 make conforming amendments.

First, the Department strongly supports adding the term “coercion” as a means of advancing prostitution (*see* H.B. 568, page 5, line 13). As currently written, HRS §712-1202(a), prohibits “advancing prostitution...by force, threat, fraud or intimidation,” but there have been instances when our courts indicated that a particular set of facts did not fit within these definitions. One such example was a victim who was told she could not eat or sleep until she finished a certain amount of work.

Adding the term “coercion” would also bring Hawaii’s sex trafficking statute in-line with federal law. 22 U.S. Code §7102(11)(a) currently defines “severe forms of sex trafficking in persons” as:

“...sex trafficking in which a commercial sex act is induced by force, fraud, **or coercion**; or in which the person induced to perform such act has not attained 18 years of age...”

Emphasis added.

While we support the intent of the proposed new subsection of sex trafficking (*see* H.B. 568, page 5, line 20, through page 6, line 8), the term “consideration” may be somewhat confusing—even with a definition—and we recommend replacing this with the phrase “fee or anything of value.” In addition, we suggest removing “(3) Consent to sexual conduct shall not constitute a defense to a violation of this section,” as the current statute appears to be targeting the offender’s behavior, not the minor’s. Minors are not capable of consenting to sexual conduct, so this subsection would also be unnecessary.

Should the Committee wish to consider the appropriate state of mind needed to prove the proposed and existing forms of Sex trafficking (HRS §712-1202), we note that the current Sex trafficking statute requires a knowing (or intentional) state of mind, whereas Solicitation of a minor (HRS §712-1209.1) can be intentional, knowing or reckless. Thus, it is possible that some cases previously charged under HRS §712-1209.1, as a “reckless” state of mind, could no longer be charged under the proposed language of H.B. 568. If the Committee wishes to maintain different state of mind requirements for what is presently known as Solicitation of a minor for prostitution, and other forms of Sex trafficking, then we recommend maintaining separate statutes.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 568, with amendments. Thank you for the opportunity to testify on this matter.

**HB-568**

Submitted on: 2/22/2021 2:05:09 PM

Testimony for JHA on 2/23/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patricia Bilyk	Individual	Support	No

Comments:

I support HB 568

Patricia LBilyk, APRN, MPH MSN